

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Non-Resident
Insurance Producer License of
Zachary Harris

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held on September 22, 2011, at the Office of Administrative Hearings, by Administrative Law Judge Beverly Jones Heydinger, pursuant to a Notice and Order for Hearing dated August 15, 2011.

The hearing record closed upon receipt of post-hearing submissions of the parties on September 30, 2011.

Appearances: Christopher M. Kaisershot, Assistant Attorney General, on behalf of the Department of Commerce (Department). Zachary Harris, Respondent, appeared on his own behalf without benefit of counsel.

STATEMENT OF THE ISSUES

1. By failing to pay the civil penalty imposed in a Consent Order entered into on October 8, 2008, has the Respondent demonstrated untrustworthiness or financial irresponsibility, in violation of Minn. Stat. §§ 45.027, subd. 7 (a)(2) and (4), and 60K.43, subd. 1(2) and (8)¹?
2. Did Respondent provide false, incorrect, and materially untrue information to the Commissioner of Commerce on his license application, in violation of Minn. Stat. §§ 45.027, subd. 7 (a)(3), and 60K.43, subd. 1(1)?
3. Did Respondent demonstrate untrustworthiness or financial irresponsibility by failing to satisfy civil judgments entered against him, in violation of Minn. Stat. §§ 45.027, subd. 7 (a)(4), and 60K.43, subd. 1(8)?
4. Did the Department prove by a preponderance of the evidence that Respondent's application for a non-resident insurance producer's license should be denied?

¹ Minnesota Statutes are cited to the 2010 Edition.

The Administrative Law Judge concludes that the Department proved the first two violations by a preponderance of the evidence, the third alleged violation was withdrawn, and the Respondent's application for a non-resident insurance producer license should be denied.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent was previously licensed as an insurance producer and commissioned as a notary public in Minnesota. Respondent also owned Integrity Bonding Company, Inc. (IBC), a licensed insurance agency.

2. In 2008, the Department commenced a regulatory action against Respondent and IBC; Respondent retained an attorney, and was represented throughout that regulatory action.² On October 8, 2008, Respondent and IBC signed a Consent Order with the Department that provided in part:

A. Zachary Harris' insurance producer's license, No. 20262347, is REVOKED;

B. Zachary Harris is REMOVED from his office as a notary public in the State of Minnesota, Commission No. 20100714...;

C. [IBC's] insurance agency license, No. 20311222, is REVOKED;

D. [IBC and Zachary Davis] shall CEASE AND DESIST from violating any laws, rules, or orders related to the duties and responsibilities entrusted to the Commissioner ...;

E. [IBC and Zachary Davis], jointly and severally, SHALL PAY a \$30,000 civil penalty; however, \$25,000 of the imposed civil penalty shall be VACATED if Respondents (1) pay \$1,000 of the imposed civil penalty at the time this Consent Order becomes effective and (2) pay an additional \$4,000 of the imposed civil penalty on or before November 5, 2008.³

3. Respondent paid \$1,000 of the imposed civil penalty at the time he executed the Consent Order. Neither Respondent nor IBC paid the additional \$4,000 that was due on or before November 5, 2008. Respondent continues to owe the State of Minnesota \$29,000, plus simple interest.⁴

² Ex. A.

³ Ex. 2.

⁴ Test. of Cheryl Costello, Senior Investigator, Enforcement Division; Ex. 3.

4. On March 22, 2011, the Respondent filed a Voluntary Petition for bankruptcy in the United States Bankruptcy Court, District of Nebraska, under Chapter 7 of the Bankruptcy Code.⁵

5. On May 20, 2011, Julie Beall, on behalf of the Respondent, submitted an application for licensure as a non-resident insurance producer to both Iowa and Minnesota.⁶ The application was made on a centralized electronic form and forwarded to the appropriate states.⁷

6. The Application asks: "Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?" The Answer stated "No."⁸

7. The Application also asked whether the applicant had judgments rendered against him or had been subject to a bankruptcy proceeding. The Answer stated "No."⁹

8. By letter dated June 27, 2011, the Department notified the Respondent that his license application was denied because he had failed to pay the civil penalty required by the 2008 Consent Order and because he had provided a false response to the question concerning involvement in a prior administrative proceeding regarding any professional or occupational license. The letter notified the Respondent of his right to request a hearing.¹⁰

9. The Department also determined that there were outstanding judgments against Respondent.¹¹

10. The Respondent was not aware that Ms. Beall submitted incorrect information until he received notice from the Department. He stated at hearing that the answer concerning the prior administrative action was "obviously" incorrect, and he would not have knowingly made it.¹²

11. On July 25, 2011, the Department received the Respondent's request for a hearing.¹³

12. In the Notice of and Order for Hearing, the Department alleged that the Respondent had failed to satisfy certain judgments. At the hearing, the Respondent requested the opportunity to present evidence concerning the pending bankruptcy. The

⁵ Marked for identification as Ex. D, and admitted after the hearing without objection.

⁶ Ex. 1; Ex. B.

⁷ Ex. C; Test. of Z. Harris.

⁸ Ex. 1 at page 3 of 5.

⁹ *Id.*, at page 3-4 of 5.

¹⁰ Ex. 3.

¹¹ Exs. 5, 6 and 7.

¹² Test. of Z. Harris.

¹³ Ex. 4.

request was granted, and on September 29, 2011, the Respondent submitted the Voluntary Petition filed with the United States Bankruptcy Court.¹⁴

13. In a letter dated September 29, 2011, based on receipt of the bankruptcy filing, the Department agreed to withdraw Count III of the Notice and Order for Hearing, which alleged that Respondent demonstrated untrustworthiness or financial irresponsibility by failing to satisfy civil judgments entered against him, in violation of Minn. Stat. §§ 45.027, subd. 7 (a)(4), and 60K.43, subd. 1(8).

14. The civil penalty arising from the October 8, 2008, Consent Order is non-dischargeable in bankruptcy because it is a fine or penalty, other than a tax penalty, imposed by a governmental unit.¹⁵ Respondent admitted that he still owed the civil penalty.

15. The Respondent requested leniency. The error on his application was entirely inadvertent because the application was submitted by an employee at the company where he now works and he was unaware of her mistake. He knew that he had a prior administrative action and would not have benefitted from erroneously answering otherwise.¹⁶

16. Respondent described the events leading up to the Consent Order as a nightmare for him. He was badly damaged by his prior affiliation with Anthony Hanson. Because of his efforts to make good on his obligations, he was unable to pay any more money for a lawyer in 2008, and, although he denied many of the allegations against him at that time, he reluctantly agreed to the Consent Order. Respondent emphasized that at no time had he placed any customers at financial risk, and that he was personally liable for many of the debts. He believes that he was the biggest victim of Mr. Hanson's wrong-doing. He has lost all of his assets, been forced into bankruptcy, and is trying to start again. He currently holds a position with a company in Nebraska, but would like to assist his father in Minnesota and earn some additional money to support his family. At this point, he does not have the money to repay the civil penalty imposed by the Department.¹⁷

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43, subd. 2.

2. The Respondent received proper and timely notice of the hearing and the Department complied with all procedural requirements.

¹⁴ Ex. D.

¹⁵ 11 U.S.C. § 523 (a)(7).

¹⁶ Test. of Z. Harris.

¹⁷ Test. of Z. Harris.

3. The commissioner may deny, suspend or revoke the license of a person who has violated any law, rule or order related to the duties and responsibilities entrusted to the commission.¹⁸

4. By failing to pay the civil penalty set forth in the Consent Order issued on October 8, 2008, the Respondent failed to comply with an order issued by the commissioner, in violation of Minn. Stat. §§ 45.027, subd. 7 (a)(2), and 60K.43, subd. 1 (2), and engaged in a practice which demonstrates that he is untrustworthy, financially irresponsible or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner, in violation of Minn. Stat. §§ 45.027, subd. 7 (a) (4), and 60K.43, subd. 1 (8). The Department failed to show that this conduct was fraudulent, coercive, or dishonest, in violation of Minn. Stat. § 60K.43, subd. 1 (8).

5. By allowing a license application to be submitted on his behalf that included false, incorrect, and materially untrue information, the Respondent violated Minn. Stat. §§ 45.027, subd. 7 (a)(3), and 60K.43, subd. 1(1).

6. The Department withdrew Count III, which alleged that Respondent's failure to pay civil judgments demonstrated the Respondent's untrustworthiness or financial irresponsibility, in violation of Minn. Stat. §§ 45.027, subd. 7 (a)(4), and 60K.43, subd. 1 (8).

7. The Department has demonstrated by a preponderance of the evidence that it had sufficient basis to deny the Respondent's license application.

8. Any Findings of Fact more properly designated as Conclusions are hereby adopted as such.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that Respondent's application for a non-resident insurance producer's license be DENIED.

Dated: October 17, 2011.

s/Beverly Jones Heydinger
Beverly Jones Heydinger
Administrative Law Judge

Reported: Digitally Recorded

¹⁸ Minn. Stat. § 45.027, subd. 7.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner of Commerce, Attn: Melissa Knoepfler, Suite 500, 85 Seventh Pl E, St. Paul, MN 55101, 651-296-2715, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

There are no material facts in dispute. The Respondent entered into a Consent Order requiring that he pay a civil penalty and he has failed to do so. He submitted an application for a license, and, although he demonstrated that another person filed the application on his behalf, he is responsible for assuring that the questions were answered correctly. Instead, the Respondent failed to disclose that he had previously been the subject of a disciplinary proceeding or that he had judgments against him and a pending bankruptcy proceeding. These are not minor mistakes on an application for a license involving financial matters. Exhibit B shows that Respondent knew about the application on May 19, 2011, yet he did not check its accuracy.

The Respondent testified that the circumstances leading up to and following the Consent Order were devastating for him and his family. His business and reputation were badly injured by his association with Anthony Hanson. Although many of the allegations in the Department's 2008 complaint related to the Hanson, the Respondent ran out of money to defend himself and was unable to take the matter to hearing. In his defense, the Respondent emphasized that he has done all he can to make up for the problems caused by his association with Hanson, and that no insurance customer was harmed. By filing for bankruptcy, he has attempted to get a fresh start, and if he is given his license, he will be able to make money and repay the civil penalty.

The Commissioner may take these mitigating factors into account in deciding whether to grant the application for a license.¹⁹ However, the Department has demonstrated by a preponderance of the evidence that it had sufficient bases to deny the Respondent's application.

B.J.H.

¹⁹ See e.g., *Falgren v. State Board of Teaching*, 545 N.W.2d 901, 908 (Minn. 1996).